

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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SILVIO R. ILLESCAS;

Claimant,

CASE NO: 7:21-cv-08473-NSR

-against-

ANTHONY J. ANNUCCI, Acting Commissioner of Department of Corrections and Community Supervision (DOCCS); DR. JOHN MORELY, Deputy Commissioner and Chief Medical officer; DR. ROBERT V. BENTIVEGNA, Supervisor of Medical Care of Green Have Corrections Facility; ALBERT ACRISH, Nurse Practitioner/Adult Health at Green Haven Correctional Facility; VASSAR BROTHERS MEDICAL CENTER; DR. SAJIN A. PILLAI, Medical Doctor at Vassar Brothers Medical Center; DR. ROBERT U. MMEREOLE, Medical Doctor at Vassar Brothers Medical Center DR. JESSE M. WOLSTEIN, Medical Doctor at Vassar Brothers Medical Center; DR. BRUCE R. GENDRON, Medical Doctor at Vassar Brothers Medical Center; DR. DANIEL E. LAURIE, Medical Doctor at Vassar Brothers Medical Center, SEHRISH SHAHID, M.B.B.S. at Vassar Brothers Medical Center,

Defendants.

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NOTICE OF MOTION TO DISMISS

PLEASE TAKE NOTICE, that upon the annexed Declaration of Andrew S. Holland dated January 18, 2022, and the accompanying Memorandum of Law, defendants VASSAR BROTHERS MEDICAL CENTER; DR. ROBERT U. MMEREOLE, Medical Doctor at Vassar Brothers Medical Center; DR. DANIEL E. LAURIE, Medical Doctor at Vassar Brothers Medical Center; DR. HECTOR OJEDA-MARTINEZ, Medical Doctor at Vassar Brothers Medical Center; and SEHRISH SHAHID, M.B.B.S. at Vassar Brothers Medical Center, will move this Court at the Hon. Charles E. Brieant Jr. Federal Building and United States Courthouse, 300 Quarropas Street, White Plains, NY 10601, for an Order dismissing the Complaint pursuant to Fed.R.Civ.P. 12(b)(1)

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MEMO ENDORSED

on the basis that the Court lacks subject matter jurisdiction, and pursuant to Fed.R.Civ.P. 12(b)(6) for failure to state a claim upon which relief may be granted; and for such other and further relief as this Court deems just, equitable, and appropriate.

Dated: January 18, 2022
Albany, New York

WILSON, ELSER, MOSKOWITZ, EDELMAN & DICKER, LLP

By: s/ Andrew S. Holland
ANDREW S. HOLLAND
Bar Roll No. AH7549
*Attorneys for Defendants Vassar Brothers Medical Center,
Dr. Robert U. Mmereole, Dr. Daniel E. Laurie, Dr. Hector
Ojeda-Martinez, and Sehrish Shahid*
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The Court is aware that Defendants Vassar Brothers Medical Center, Dr. Robert U. Mmereole, Dr. Daniel E. Laurie, Dr. Hector Ojeda-Martinez, and Sehrish Shahid filed a motion to dismiss without first seeking leave from the Court. Defendants' motion to dismiss is hereby denied without prejudice.

Defendants' previously-served Motion to Dismiss, dated January 18, 2022, and supporting papers are deemed properly served and shall stand. The remainder of the briefing schedule is as follows: (1) pro se Plaintiff's opposition papers shall be served, not filed, on March 7, 2022; and (2) Defendants' reply papers shall be served, not filed, on March 22, 2022.

Defendants' counsel is directed to file all motion papers, including the served moving papers and Plaintiff's opposition papers, on the reply date on March 22, 2022. The parties are directed to provide Chambers with 2 physical courtesy copies of their motion papers on the same date they are served on opposing counsel. Where possible, the parties are further directed to provide the Court with an electronic courtesy copy of the motion papers as they are served per this Court's local emergency civil rules.

The Clerk of Court is kindly directed to terminate the motion at ECF No. 13. The Clerk of Court is further directed to mail a copy of this Endorsement to pro se Plaintiff at his address listed on ECF and to show service on the docket.

DATED: January 20, 2022
White Plains, NY

SO ORDERED: